Supreme Court, U. S.
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No. 75-1736

In the Supreme Court of the United States

OCTOBER TERM, 1976

APEX OIL COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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To support its policy argument concerning the most effective method of enforcing the oil discharge reporting requirements of the Federal Water Pollution Control Act, 33 U.S.C. (Supp. V) 1321(b)(5), petitioner suggested the emergence of a possible conflict among the courts of appeals regarding whether Section 311(b)(6) of that Act, as added, 86 Stat. 864, 33 U.S.C. (Supp. V) 1321(b)(6), imposes a civil or criminal penalty. The sole authority upon which petitioner relied as establishing the putative conflict, *United States* v. *LeBeouf Bros. Towing Co.*, 377 F. Supp. 558 (E.D. La.), has since been reversed by the United States Court of Appeals for the Fifth Circuit, which held, citing the decision of the court of appeals in the instant case, that Section 311(b)(6) creates a civil penalty.

United States v. *LeBeouf Bros. Towing Co.*, No. 74-3140, decided August 16, 1976, slip op. at 5116.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

AUGUST 1976.

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[1]We are lodging with the Clerk of this Court a copy of the Fifth Circuit's decision.